

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERIC HIGGINS,

Defendant.

HONORABLE PATRICK J. DUGGAN

No. 09-20630

PLEA HEARING

Detroit, Michigan -- Tuesday, August 31, 2010

APPEARANCES:

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On behalf of Plaintiff

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On behalf of Defendant

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I N D E X

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ERIC HIGGINS

Examination By Mr. Cares7 1

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Detroit, Michigan

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2:04 p.m.

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THE CLERK: Criminal action number 09-20630,
United States versus Eric Higgins.

MR. CARES: Good afternoon, Your Honor. Steven
Cares, appearing on behalf of the United States.

MR. SIMASKO: Steven Simasko, on behalf of the
defendant, Eric Higgins, who stands to my right.

THE COURT: Switch places.

MR. SIMASKO: Certainly.

THE COURT: What is your name, sir?

THE DEFENDANT: My name is Eric Higgins.

THE COURT: Mr. Higgins, it's my understanding you
appear here today charged with the crime of possession
of child pornography?

THE DEFENDANT: That's right.

THE COURT: You understand that carries with it a
maximum penalty of ten years in prison?

THE DEFENDANT: Yes, sir.

THE COURT: And a maximum fine of \$250,000?

THE DEFENDANT: Yes, sir.

THE COURT: You understand at this point you're
presumed innocent and you have a right to contest this

1 charge?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** If you should contest the charge and
4 request a trial, that trial could be with a Judge or
5 jury, you know that?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** If you had a trial, the Government
8 would have to prove your guilt, beyond a reasonable
9 doubt, through the sworn testimony of witnesses called
10 to this witness stand?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** And do you know that any witnesses
13 called by the Government could be questioned by you or
14 your lawyer?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Do you know that you have a right to
17 call witnesses on your own behalf?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** You know you have a right to testify
20 on your own behalf?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** You also know that if you had a trial,
23 you could decide not to testify. If you chose not to
24 testify, the fact that you are not testifying, could
25 not, in any way, be used against you?

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1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Even if you can't afford a lawyer, the
3 Court will appoint one for you, you understand that?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Knowing you have all those rights, is
6 it your desire to give up those rights and to plead
7 guilty to this charge?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** I have before me a Rule 11 Plea
10 Agreement, which appears to have your signature on page
11 eight. Is that, in fact, your signature?

12 **MR. SIMASKO:** I'm looking for the signature page.

13 **THE DEFENDANT:** Yes, sir, page eight.

14 **THE COURT:** Did you review this entire plea
15 agreement with your lawyer?

16 **THE DEFENDANT:** I did, sir.

17 **THE COURT:** Do you understand all the terms and
18 conditions of this plea agreement?

19 **THE DEFENDANT:** I do, sir.

20 **THE COURT:** I'm not going through the entire
21 agreement, but I do notice at page three it says, "An
22 agreed guideline range of 37 to 46 months", is that
23 your understanding?

24 **THE DEFENDANT:** Yes, I understand that.

25 **THE COURT:** I also note that on page four of your

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1 sentence it says that, "The Government makes a
2 non-binding recommendation that the sentence of
3 imprisonment be no more than 46 months", is that your
4 understanding?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** I'm not going through the other terms
7 and conditions of this plea agreement because you've
8 said you read them and had discussed them with your
9 lawyer. Other than this agreement, have you made any
10 other agreement with anybody in order to talk you into
11 pleading guilty?

12 **THE DEFENDANT:** No, sir.

13 **THE COURT:** Anyone forcing you or threatening you
14 to plead guilty?

15 **THE DEFENDANT:** No, sir.

16 **THE COURT:** Are you pleading guilty freely and
17 voluntarily?

18 **THE DEFENDANT:** I am, sir.

19 **THE COURT:** Are you pleading guilty because you
20 believe you are guilty of this offense?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Mr. Cares, please advise the Court and
23 the defendant of the elements of the crime that must be
24 established.

25 **MR. CARES:** Yes, Your Honor. Thank you.

1 As set forth on page two of the Rule 11 Plea
2 Agreement, the elements are generally that the
3 defendant possessed an item or images of child
4 pornography. Number two, that these images had been
5 transported or received in interstate commerce, which
6 includes by use of the internet. And number three, at
7 the time the defendant possessed these images, he
8 believed that such items substituted child pornography.

9 **THE COURT:** Please, make inquiry of the defendant
10 to establish a factual basis.

11 **EXAMINATION**

12 **BY MR. CARES:**

13 **Q.** Mr. Higgins, is it true that on or about June 8th,
14 2009, you were interviewed by Special Agent Christina
15 Nutt from the Department of Homeland Security Office?

16 **A.** Yes, I was.

17 **Q.** And on or about that date you turned over your
18 computer -- one of your computers to that Special
19 Agent, is that true?

20 **A.** That is true.

21 **Q.** And on that computer there contained images of child
22 pornography, is that true?

23 **A.** Yes that's what was found on there.

24 **Q.** And those images were received by you using the
25 internet; is that correct?

1 **A.** That is correct.

2 **Q.** And you possessed those images knowing that they were,
3 in fact, child pornography, is that true?

4 **A.** Yes.

5 **Q.** And this occurred -- the interview and your possession
6 of the computer occurred at your apartment which is in
7 Clyde, Michigan?

8 **A.** In my home, yes.

9 **THE COURT:** Clyde, Michigan?

10 **MR. SIMASKO:** St. Clair County, Michigan, Your
11 Honor.

12 **THE COURT:** Eastern District?

13 **MR. CARES:** Yes, Your Honor.

14 **THE COURT:** And approximately when did this take
15 place?

16 **BY MR. CARES,** CONTINUING:

17 **Q.** This took place on or about June 8th, 2009; is that
18 right?

19 **A.** Yes.

20 **THE COURT:** You understand that if I accept this
21 plea, I'm going to refer the matter to the probation
22 department for presentence report?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Based on the information in that
25 report, I'll then proceed to what I think should be the

1 appropriate sentence, do you understand that?

2 **THE DEFENDANT:** I do, sir.

3 **THE COURT:** All right. The Court does hereby
4 accept the plea of guilty. The Court is satisfied that
5 it is freely and voluntarily made and that there's a
6 factual basis for such plea. The Court refers the
7 matter to the probation department for a presentence
8 report.

9 Any objection to self reporting?

10 **MR. CARES:** No objection, Your Honor. If I may
11 state something more before we conclude?

12 **THE COURT:** Sure.

13 **MR. CARES:** The defense counsel has asked that I
14 put this forth on the record. The Court indicated and
15 as reflected in the Rule 11 Plea Agreement, there is no
16 dispute between the parties with respect to the
17 guideline range that will be considered by the
18 probation department and considered then by the Court.

19 The defendant has asked that he be permitted,
20 which he is permitted by law, to argue for a variance
21 under 3553(a). I just state that the Government
22 acknowledges that he may make that argument for a
23 sentence below the guideline range.

24 **THE COURT:** All right. No objection to bond being
25 continued?

1 **MR. CARES:** Correct, Your Honor, no objection.

2 **THE COURT:** So ordered. Court is in recess.

3 **MR. SIMASKO:** Thank you, Judge.

4 (Whereupon proceedings concluded at 2:11 p.m.)

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C E R T I F I C A T I O N

I, Nefertiti A. Matthews, official court reporter
for the United States District Court, Eastern District of
Michigan, Southern Division, appointed pursuant to the
provisions of Title 28, United States Code, Section 753,
do hereby certify that the foregoing is a correct
transcript of the proceedings in the above-entitled cause
on the date hereinbefore set forth.

I do further certify that the foregoing
transcript has been prepared by me or under my direction.

Date: September 30, 2010

s:/Nefertiti A. Matthews
Nefertiti A. Matthews,
Official Court Reporter